

AN INTRODUCTION TO
LAW,
LAW STUDY,
AND THE
LAWYER'S ROLE

THIRD EDITION

James E. Moliterno

Fredric I. Lederer

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2010
James E. Moliterno
Fredric I. Lederer
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Moliterno, James E., 1953-

An introduction to law, law study, and the lawyer's role / James E. Moliterno
and Fredric I. Lederer. -- 3rd ed.

p. cm.

ISBN 978-1-59460-792-9 (alk. paper)

1. Law--Study and teaching--United States. 2. Practice of law--United States.
I. Lederer, Fredric I. II. Title.

KF272.M64 2010

340.071'173--dc22

2010010427

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*To Professor Moliterno's family
and*

*To Alyssa and Caryn Lederer, who choose to serve, each in her own way, women
of valor, competence, heart, and honor, who stand forever as their proud father's
role models.*

CONTENTS

Preface	xi
1 • The Beginnings	3
2 • The Profession	13
<i>Valdez v. Alloway's Garage</i>	13
Introduction	19
A Profession	20
Lawyers' Duties	21
Governing Ethical Rules and "Obedience to the Unenforceable"	23
Self-Governance	30
The Profession at Present: Service vs. Profit	31
3 • The Nature of Law	35
The Scenario	35
The First Homicide	36
The Facts	36
Issue	37
Assumptions	37
Discussion	37
The Problem	38
The Second Homicide	42
The Facts	42
Issue	43
Discussion	43
The Third Homicide	46
The Facts	46
Issue	47
Discussion	47
A Digression	50
The Fourth Homicide	51
The Facts	51

Part One	53
Issues	53
Discussion	53
How Do You Rule, Your Honor?	55
Part Two	56
Assumption	56
Procedural Posture	57
Issues	57
Discussion	58
The Fifth Homicide	61
Assumption	61
The Facts	61
Issues	61
Discussion	61
Conclusion	64
4 • Law as a Literary Profession	67
The Need for Precision	68
Good Legal Writing Is Simply Good Writing	69
Writing in Law School	70
The Casebrief	72
Sample Casebrief #1	76
Sample Casebrief #2	78
Briefing Cases, an Introduction	79
Parts of the Casebrief	81
5 • Common Law Development and the Classroom Experience	87
<i>Seixas v. Woods</i>	88
<i>Thomas and Wife v. Winchester</i>	91
<i>Loop v. Litchfield</i>	98
<i>Losee v. Clute</i>	102
<i>Devlin v. Smith</i>	104
<i>MacPherson v. Buick Motor Co.</i>	109
Case Analysis Reprised: Examinations	123
Sample Examination Question	124
Sample Examination Answer	124
6 • A Return to Judicial Interpretation	127
<i>People v. Gibbons</i>	128

7 • Law Library Survival	141
Legal Research	141
The Law Library	141
Library Survival; Citations	142
Court Opinions	144
Law Review Article or Periodical	144
Treatise or Hornbook	145
Illustrative Citations	145
Court Opinions	145
Law Review Articles or Periodicals	145
Treatises or Hornbooks	146
8 • Client Service	147
Introduction	147
Interviewing Clients, the Beginning of Client Service	148
Icebreaking	149
Overview	149
Gap Filling	151
Response	152
Closing	153
An Example of Client Service	153
An Interview with Pat Marshall	153
An Assignment	157
An Intraoffice Memorandum of Law	168
A Client Letter	172
9 • Law School	175
First, Legal Education's Goal, or, "Why <i>Isn't</i> There an Answer?"	175
Second, the Caveat	178
The Basic Structure	179
Accreditation	179
Governance	179
Curriculum; Requirements; Specialization	179
Law School Peers, Grades, and Competition	182
Working	184
Housing	184
Class	185
The Socratic Method and Related Topics	185
Avoiding Being Called On	187

Technology	188
Study and Class Preparation	189
Examinations	190
Grades	191
Failure and Its Consequences	192
Law Reviews, Moot Court, and Other Activities	193
Personal Life and Family	194
Placement and Its Effects	194
Placement's Other Effects	195
Summer Positions	197
Personal Technology	197
A Closing Note	199
10 • The Interrelationship Between Law School and Law Practice	201
Law School	201
Ethics and Competence	202
And What Type of Lawyer Do You Want to Be?	205
Appendix	209

PREFACE

Lawyers perform and fill many roles in our society; some of those are regarded as socially valuable and others are not. Even among those favorable roles there is wide variety. Lawyers are business people; learned, intellectual professionals; helping professionals; professional writers; people of moral influence; producers of justice; advocates; and counselors. The lives of many lawyers are a complex mesh of all these roles; others have chosen to emphasize one or several of these roles to the point of nearly extinguishing the others. In part, this book is meant to introduce you to some of these roles and their interrelationships, and to help you begin, should you so desire, the difficult process of weaving your own unique cloth.

This book is intended primarily for those who are interested in learning what law is and how law students become lawyers. However they see themselves or are seen by others, nearly all lawyers do have one thing in common: they were all once beginning law students. For those who plan to attend law school this book is meant to make that potentially horrifying time much less so. In doing so, we will introduce you to a number of skills that are critical to law students, such as opinion reading and briefing, classroom participation, writing, and interpersonal relations. If there is any efficacy to legal education as a preparation for the practice of law, as we think there is, you would expect that these same skills would be as useful to lawyers as to law students. Happily that is the case. As a result, what you learn today as a student of the law will be valuable to you as a lawyer as well.

Our fundamental goal is to provide you with some early insight into what law is. Thinking early about the nature of law itself should help those of you who are or will be law students better understand your law school course work and enrich your life as a lawyer.

Although changing, legal education remains primarily a study of appellate court opinions. Those opinions, rendered by judges who have never seen the parties to the disputes being resolved, are distant from the facts that underlie the dispute, the parties' original interests, and the early lawyering functions that began the process of dispute resolution. Because the study of appellate opinions all too often occurs in academic isolation, students may fail to see or

appreciate the legal and pragmatic consequences that flow from the lawyer's representation of the client. We hope that this book will aid your study and understanding of the law and those appellate court opinions by providing you with a perspective on the beginnings of the process that is not apparent from reading opinions alone.

Finally, though not unimportantly, this book may provide special insights into the law school world that are valuable for anyone considering entry into the field. We hope that an undergraduate student, knowing what to expect from the law school experience, will be better positioned to make informed career choices.

We believe that any given piece of writing must be written with both its intent and its audience in mind. As a result, in writing this introductory book we have, quite consciously, attempted to make it easy reading. To accomplish this goal, we have chosen an informal prose style without the multitude of citations and footnotes customary to formal legal writing. We hope that you will not be disappointed with their absence.

This book is an outgrowth of the Introductory Week of the William & Mary Law School's Legal Skills Program which the authors helped develop. As such, it is impossible to individually thank all the people who have contributed directly and indirectly to this text. At the risk of omission, we would like to particularly note John Levy, Patty Roberts, Allen Black, Laura Dahl, Lizbeth Jackson, Paula Sinozich and Jane Taylor.

We would also like to thank and acknowledge: the members of the Marshall-Wythe Class of 1991; the partners and associates of **Moliterno, Wooledge & Grove** and its successor firms; the partners and associates of **Lederer & Posey**; and all of our partners in the now 22 year existence of the William & Mary Legal Skills Program.